

Application Serial Number 10/810,130
Reply Dated: February 1, 2007

Regarding Office Action Dated: 11/01/2006

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REMARKS/ARGUMENTS

Claims 1-40 are presented for the Examiner's consideration. Pursuant to 37 C.F.R. §1.111, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

I. Claim Amendments and New Claims

Independent claims 1, 10, and 16 have been amended to recite that the first and second members comprise hollow¹ members having a depth as discussed at page 7, lines 10-11 of the specification. The hollow first and second members comprise a tray or tub having an upstanding sidewall as illustrated in the drawings forming the claimed depth. Each of the first and second members are capable of holding and retaining a quantity of sheet-like articles when refilling the dispenser. Independent claims 10 and 16 have been amended to claim a combination of a dispenser housing a plurality of sheet-like articles. Claims 5, 12, and 18 have been amended to claim the second entrance comprises an ellipse. New claims 24-40 are drawn to additional aspects of the invention concerning the hinge structure, details for sealing the third member to the second member, details for attaching the third member to the first member, details for opening the first and second member, and details for latching the two members. The new claims are supported by the specification and drawings particularly at page 7, lines 14-15; page 10, lines 16-28; page 11, lines 4-14; page 12, lines 7-29. No new matter is believed to be introduced by the new claims.

¹ Hollow – Deeply indented or concave; sunken. See the American Heritage College Dictionary Third Edition copyright © 2000.

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II. U.S. 35 §102 Rejections

Claims 1, 4, 5, 6, 8, 16, 19, and 20 stand rejected under 35 U.S.C. §102(b) as anticipated by USPN 4,964,526 issued to Stephens. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Broths. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed Cir. 1987).

Applicants have amended independent claims 1, 10, and 16 to recite that the first and second members comprise hollow members having a depth. The Examiner has correlated the bottom compartment 20 in Figure 1 of Stephens '526 as the first member and the lower cover plate 70 as the second member in making the rejection. However, the lower cover plate 70 is a planar element and not a hollow member having a depth as claimed.

The Examiner has stated that element 45 in Figure 1 of Stephens '526 shows "a second hinge aligned along a common axis with said first hinge said third member capable of pivoting on said second hinge to cover said second entrance." Applicants cannot find an element 45 referenced in either the drawings or specification of Stephens '526. All of the embodiments illustrated in Stephens '526 clearly show each of the hinges are offset from one another and not aligned along a common axis as claimed. In Figure 11, the main hinge pins 54 are offset from the lower plate hinge pins 74, which are offset from the upper plate hinge pins 82. The hinge pins for each of the various elements form three separate axes with each axis offset from the next. Stephens '526 at column 7, lines 1-4 indicates that the hinges could be aligned; however this passing sentence is not enabled by any structure or specific description to accomplish the alignment using hinge pins or any other type of hinge. Applicants assert that the minimalist disclosure of Stephens '526 is not enabled with respect to use of a single hinge axis. Stephens '526 states a desired result, but does not describe or enable any method of accomplishing that result. For at least the above reasons, Stephens '526 does not anticipate the rejected claims.

Finally, claims 24, 38, 39, and 40 each recite that the first hinge is a bifurcated living hinge with the second hinge located between the bifurcated parts of the first hinge and that the

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hinges are aligned along a common axis. Stephens '526 does not disclose the specifically claimed hinge structure. For at least the above reason, Stephens '526 does not anticipate pending claims 24, 38, 39, and 40.

III. U.S. 35 §103 Rejections

Claims 2, 3, 7, 9, 10-11, 12-15, and 17-18 stand rejected under 35 U.S.C. §103(a) as obvious over USPN 4,964,526 issued to Stephens in view of USPN 5,542,567 issued to Julius. Claims 21-23 stand rejected under 35 U.S.C. §103(a) as obvious over USPN 4,964,526 issued to Stephens in view of USPN 4,462,507 issued to Margulies. The Manual of Patent Examining Procedure in section 2142 entitled Legal Concept of *Prima Facie* Obviousness outlines the requirements for a proper obviousness rejection.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1995).

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A proper *prima facie* case of obviousness has not been established since the proposed combination fails to teach or suggest all the claimed limitations. In particular, there is no teaching or suggestion to modify the flat plate 70 of Stephens '526 to be a hollow member having a depth as claimed.

With regard to claims 5, 12, 18, and 26, Stephens '526 does not teach or suggest an ellipse for improved dispensing of sheet-like articles. The opening of Stephens '526 is designed to dispense tampons and panty liners. Furthermore, the opening is shaped like a race track having two linear sides and two curved ends. It is not an ellipse as claimed.

With regard to claims 13, 14, 15, 19, Applicants positively claim the combination of a dispenser enclosing a plurality of sheet-like articles. The claimed limitations are preferred embodiments for the combination having improved dispensing. They are not expressions relating apparatus to work pieces during an intended operation as stated by the Examiner, since a combination is being claimed.

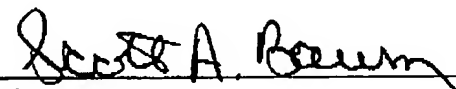
IV. Conclusion

For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance. Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. The undersigned may be reached at: 920-721-7760.

Respectfully submitted,

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